

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
New York Division**

-----X  
:  
DUNKIN' DONUTS FRANCHISED :  
RESTAURANTS LLC, :  
a Delaware Limited Liability Company, :  
DD IP HOLDER LLC, :  
a Delaware Limited Liability Company, :  
BASKIN-ROBBINS FRANCHISED SHOPS LLC, :  
a Delaware Limited Liability Company, :  
BR IP HOLDER LLC, :  
a Delaware Limited Liability Company :  
:  
Plaintiffs, :  
:  
v. : C.A. No. 07-CV-11274 (AKH)  
:  
TREMONT DONUT LLC, , :  
a New York Limited Liability Company, :  
:  
Defendant. :  
-----X

**CERTIFICATION OF RONALD D. DEGEN PURSUANT TO LOCAL RULE 6.1(d)**

1. I am a member of the Bar of this Court and a member of the firm of O'Rourke & Degen, PLLC, local counsel for Plaintiffs Dunkin' Donuts Franchised Restaurants LLC ("Dunkin' Donuts") and DD IP Holder LLC.

2. I have been outside counsel for Dunkin' Donuts in New York State for more than 25 years and for Baskin-Robbins for more than 17 years and am fully familiar with the facts and circumstances of this case and the operation of Dunkin' Donuts and Baskin-Robbins franchises.

3. This Certification is being submitted in support of Plaintiffs' motion for a preliminary injunction.

4. The statements made in Plaintiffs' Memorandum of Law and signed by me are hereby incorporated herein by reference and made part of this Certification.

**REASON FOR REQUEST FOR PROCEEDING BY ORDER TO SHOW CAUSE**

5. On November 20, 2007, Defendant's Shop was inspected by a representative of the Steritech Group, Inc. ("Steritech"), a third-party hired by Plaintiffs to conduct food safety inspections. Numerous standards violations were identified relating to health, sanitation, and safety. *Id.* On November 20, 2007, the Steritech representative hand-delivered to Defendant's Shop a notice to cure listing the standards violations present at Defendant's Shop and requesting that the violations be cured immediately. On November 27, 2007 a Dunkin' representative reinspected Defendant's Shop. He saw that many standards violations remained uncured.

6. The violations of health and safety standards at Defendant's shop included food products not stored properly; food products not cooked to their proper temperature; food products not fully thawed prior to cooking; food products prepared on uncleaned and unsanitized tables and generally unclean and poorly maintained premises. Despite requests by Plaintiffs and ample opportunity to cure, Defendant refuses to correct this unacceptable situation. This is an action to effect an immediate cure of specific conditions currently posing a health or safety risk at Defendant's shop.

7. Every day the health of consumers and the reputation of Dunkin' Donuts and Baskin-Robbins are at risk as a result of the refusal of Defendant to clean up its store. The potential damage to the reputation of Plaintiffs may be incapable of being repaired.

8. Unless this Court allows Plaintiffs to proceed by order to show cause, valuable time will have been lost and Defendant will be able to continue to operate a Dunkin' Donuts and Baskin-Robbins shop that poses a threat to the public.

**CERTIFICATIONS SUBMITTED IN SUPPORT OF MOTION**

9. In support of this application Plaintiff is submitting the Certifications of Jack

Laudermilk and Todd Matlovsky (Exhibits 1 and 3).

**NO PREVIOUS APPLICATION**

10. No previous request has been made for the relief requested herein.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this  
18th day of December, 2007.

/s/ Ronald D. Degen  
**RONALD D. DEGEN** (RD 7808)

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
New York Division**

-----X	:	
DUNKIN' DONUTS FRANCHISED	:	
RESTAURANTS LLC,	:	
a Delaware Limited Liability Company,	:	
DD IP HOLDER LLC,	:	
a Delaware Limited Liability Company,	:	
BASKIN-ROBBINS FRANCHISED SHOPS LLC,	:	
a Delaware Limited Liability Company,	:	
BR IP HOLDER LLC,	:	
a Delaware Limited Liability Company	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 07-CV-11274 (AKH)
	:	
TREMONT DONUT LLC,	:	
a New York Limited Liability Company,	:	
	:	
Defendant.	:	
-----X	:	

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs Dunkin' Donuts Franchised Restaurants LLC, DD IP Holder LLC, Baskin-Robbins Franchised Shops LLC, and BR IP Holder LLC hereby move to enjoin their franchisee, Defendant Tremont Donut LLC, to cease violating at its Dunkin' Donuts and Baskin-Robbins shop the standards for health, sanitation, and safety set forth in Defendant's Franchise Agreement with Plaintiffs' and Plaintiffs' operating manuals. At present, Defendant is in flagrant violation of those standards. For example, a recent inspection of Defendant's shop revealed numerous violations of health and safety standards, including food products not stored properly; food products not cooked to their proper temperature; food products not fully thawed prior to cooking; food products prepared on unclean and unsanitized tables and generally unclean and poorly maintained premises. Despite requests by Plaintiffs and ample opportunity to cure,

Defendant refuses to correct this unacceptable situation. This is an action to effect an immediate cure of specific conditions currently posing a health or safety risk at Defendant's shop. These conditions are a material breach of the Franchise Agreement as well. Plaintiffs do not seek an order mandating future compliance, but only the cessation of an existing condition.

1. At all times relevant to this action Defendant Tremont Donut LLC has been the owner and operator of a retail doughnut shop and retail ice cream store located at 2702 East Tremont Avenue, Bronx, New York 10461 ("Defendant's Shop") pursuant to a Franchise Agreement dated August 23, 2002.

2. Plaintiffs' representative recently inspected Defendant's Shop and found numerous violations of health, sanitation, and safety standards. Despite notice by Plaintiffs and ample opportunity to cure, Defendant has failed to correct this situation.

3. By this Motion, Plaintiffs seek to enjoin Defendant to cease violating at Defendant's Shop the standards for health, sanitation, and safety set forth in the Franchise Agreement between the parties and Plaintiffs' operating manuals.

4. In support of this Motion, Plaintiffs rely on the accompanying Memorandum of Law, certifications, and exhibits.

WHEREFORE, Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction and enjoin Defendant to cease violating at its Shop Plaintiffs' standards for health, sanitation, and safety as identified on the Quality Assurance Food Safety & Sanitation Reinspection form dated November 27, 2007, within five (5) days of the date of the Court's Order.

Respectfully submitted,

/s/ Ronald D. Degen

Ronald D. Degen (RD 7808)  
Scott Goldfinger (SC 9219)  
O'ROURKE & DEGEN, PLLC  
225 Broadway, Suite 715  
New York, NY 10007  
Telephone: (212) 227-4530  
Facsimile: (212) 385-9813

Robert L. Zisk (RZ 1275)  
David E. Worthen (DW 8519)  
Iris Figueroa Rosario (IR 7902)  
GRAY, PLANT, MOOTY, MOOTY  
& BENNETT, P.A.  
2600 Virginia Avenue, N.W.  
Suite 1111  
Washington, DC 20037  
Telephone: (202) 295-2200  
Facsimile: (202) 295-2250

*Attorneys for Plaintiffs*

Dunkin' Donuts Franchised Restaurants LLC,  
DD IP Holder LLC, Baskin-Robbins Franchised  
Shops LLC, and BR IP Holder LLC

Dated: December 18, 2007